
Media Lines

ISSUE: On January 30, 2015, the Prime Minister will announce the *Anti-terrorism Act, 2015*. This comprehensive national security Bill will include a number of legislative components: *Information Sharing, CSIS Threat Disruption Activities, Division 9 of the Immigration and Refugee Protection Act (IRPA), the Passenger Protect Program, and changes to the Criminal Code.* + DoJ elements

KEY MESSAGES

- The international jihadist movement has declared war on Canada and our Allies. The recent attacks in St-Jean-Sur-Richelieu and Ottawa, and those against the people of France and Australia, have reminded us no country is immune to the threat of terrorism.
- In order to directly address these issues, the Government of Canada is tabling legislation that will enhance information sharing for national security purposes, provide law enforcement and national security agencies with the additional tools they need to prevent, detect deny and respond to the threat, and further prevents travel for terrorist purposes.
- Without security, there can be no liberty. The proposed legislation seeks to strike this very balance, with a range of provisions to strengthen safeguards. The roles of existing independent review bodies are robust and will also serve to counter-

balance the authorities created under this Bill.

- We are working to prevent acts of terrorism by introducing a comprehensive package of measures that would:
 - Stop those who promote terror by creating a new *Criminal Code* offence that will criminalize the promotion of terrorist attacks on Canadians;
 - Interfere with terrorist recruitment by giving our courts the authority to order the removal of terrorist propaganda online;
 - Provide CSIS with the ability, under judicial authority, to intervene to prevent specific terror plots while they are still in the planning stages ;
 - Provide law enforcement agencies with enhanced ability to detect and prevent terrorism offences and terrorist activity;
 - Prevent terrorists from travelling by enabling the sharing of relevant information across federal departments and agencies while also strengthening the Passenger Protect Program;
 - Making it easier for law enforcement agencies to detain suspected terrorists before they can harm Canadians and toughening penalties for violating court ordered conditions on terror suspects;
 - Enabling the sharing of relevant information across federal departments and agencies;
- Ensuring national security agencies are able to prevent foreigners who pose a threat to Canada from obtaining Canadian citizenship, or from coming to Canada; and
- Provide witnesses with additional protection in national security proceedings and prosecutions.
- This national security legislation is designed to help authorities stop planned attacks, get threats off our streets, criminalize the promotion of terrorism, and prevent terrorists from travelling and recruiting others.

Commented [PE1]: Policy prefers the following:

Enhance the Passenger Protect Program by further mitigating threats to transportation security and preventing travel by air for the purpose of engaging in terrorism-related activities.

INFORMATION SHARING

- Information on national security threats can often be found in different forms and places across the government, and must be pieced together to form a coherent picture so that appropriate action can be taken.
- A more robust security framework would enable the sharing of relevant information across federal departments and agencies for national security purposes, removing systemic barriers and eliminating intelligence gaps, and allow for faster access to critical information when swift action is required.
- Government institutions would proceed with this modernization in a way that respects security and privacy—consistent with Canadian values.

CSIS THREAT DISRUPTION ACTIVITIES

- The proposed changes represent the Government's commitment to protecting its citizens from an evolving global threat environment. This more robust security framework would bring new flexibility and expertise to bear against security threats, both at home and abroad.
- Under current legislation, CSIS can detect security threats, but is unable to take action to protect the security of Canada.
- For instance, when CSIS conducts an interview as part of an investigation, the sole purpose of the interview must be to collect information, not to dissuade the subject from actions that threaten the security of Canada.
- The proposed amendments would bring CSIS into line with the mandates of most of our allies' security intelligence agencies by giving CSIS a new mandate to disrupt threats to the security of Canada.
- With this new mandate, CSIS could seize opportunities to address threats to Canada. CSIS is well-placed to quickly disrupt threats before they can develop.
- For instance, with its new mandate, CSIS could ask a trusted associate of a prospective terrorist traveler, such as a family member, to intervene to dissuade the person from traveling.
- A range of safeguards will ensure that CSIS uses this new mandate in a way that respects security, privacy and personal liberty.
- CSIS will require court warrants to take certain measures to disrupt threats, both within and outside of Canada, including where its proposed disruption activities contravene *Charter* rights or would otherwise be contrary to Canadian law.
- All CSIS activities will remain subject to Ministerial direction and oversight, as well as independent review by the Security Intelligence Review Committee (SIRC). SIRC issues an annual report that will ensure the public is kept informed of CSIS' threat disruption activities.

DIVISION 9 IRPA

- It is sometimes necessary to rely on classified information to determine whether a non-citizen is inadmissible to Canada on serious grounds, such as national security, human rights violations and serious or organized criminality.
- To do so, proceedings under Division 9 of the *Immigration and Refugee Protection Act* (IRPA)—such as security certificates—allow for the use and protection of classified information when its public disclosure would be injurious to national security or endanger the safety of any person.

- To offer a new protection for classified information, the Minister of Public Safety and Emergency Preparedness and the Minister of Citizenship and Immigration could appeal or have the Court review orders to publicly disclose classified information during these proceedings.
- For example, disclosing classified information would injure national security if it were to reveal investigation techniques, or would endanger the safety of a person if classified information regarding a witness were to be disclosed.
- Also, to ensure expeditious proceedings, the Act would state what information would form part of security certificate cases before the Federal Court, and in cases involving applications for non-disclosure before the Immigration and Refugee Board.
- These measures are consistent with the Government of Canada's fundamental duty to protect the safety and security of Canadians, while ensuring the fairness of proceedings.
- Canada continues to uphold its legal obligations and advocate for the rule of law. Canada remains committed to preserving the integrity of our borders and immigration system.

PASSENGER PROTECT PROGRAM

- The proposed enhancements would provide the Passenger Protect Program (PPP) with a mandate to identify, list, and mitigate threats from two categories of individuals: those who are suspected of posing a threat to transportation security, and those who are attempting to travel abroad to support terrorism-related activities.
- For example, individuals supporting terrorism activities such as attacks, funding for weapons, training and recruitment, will now also be listed and could potentially be prevented from flying.
- This enhancement to the PPP would provide the Government with an additional tool to prevent travel for terrorism purposes, including in cases where arrest and prosecution are not possible at the time.
- Specifically, the *Secure Air Travel Act* defines the following:
 - the program mandate to address threats to both transportation security and terrorist travel by air;

- the authorities of the Minister of Public Safety and Emergency Preparedness and the Minister of Transport under the PPP;
 - the authorities for protecting and sharing information with foreign and domestic partners; and
 - the recourse mechanisms for people who are affected by decisions made by the Minister of Public Safety and Emergency Preparedness under the PPP.
- These changes would ensure the continued respect and protection of the rights of Canadians, in accordance with both the *Charter of Rights and Freedoms* and the *Privacy Act*, by strengthening privacy protection, review and accountability.

DOJ ELEMENTS

PEACE BONDS AND RECOGNIZANCE WITH CONDITIONS

- The purpose of the **recognizance with conditions** measure is to address a situation where a police officer believes that a terrorist activity will soon be carried out but does not necessarily have more details. The tool is flexible enough to be used on individuals who may in some way be connected to carrying out terrorist activity.
- The purpose of a **terrorism peace bond** is to prevent or disrupt a specific individual from committing a terrorism offence. A peace bond allows someone who reasonably fears that a particular person will commit a terrorism offence to seek to have a judge impose a peace bond on that person with any reasonable conditions to protect the public from the commission of a terrorism offence.
- The amendments to the **recognizance with conditions** and provisions related to the issuance of **terrorism peace bonds** of the *Criminal Code* would make it easier to obtain such orders through the courts and help prevent terrorist acts by:
 - Lowering the threshold required for law enforcement to obtain both the recognizance with conditions and terrorism peace bond;
 - Increasing the period of preventative detention under a recognizance from 3 days to a possible total of up to 7 days, with periodic judicial review;
 - Requiring judges to consider imposing certain conditions on a defendant, such as surrendering their passport or not leaving the jurisdiction. Judges may also consider imposing conditions such as reporting requirements or electronic monitoring;
 - Increasing the maximum penalty for breaches of these court-ordered conditions from 2 to 4 years imprisonment; and
 - Increasing the efficiency of the proceedings through a number of means, including through the use of video hearings.

- The proposed measures are needed to ensure public safety, and they are consistent with counter-terrorism laws in other countries. The United Kingdom and Australia for example, also have preventative powers including the ability to impose conditions and to detain--although their approaches may vary; for example, the maximum period of detention is 14 days in the United Kingdom.
- These tools contain a number of safeguards, including judicial oversight as well as the requirement of Attorney General consent, and annual public reporting to Parliament on the use of recognizance with conditions.

Advocacy or promotion of terrorism

- This reform would create a new offence of advocating or promoting terrorism generally.
- The criminal law already applies to those who counsel, or actively encourage, the commission of a specific terrorism offence. This reform would fill an existing gap in the criminal law by applying it to those who, by communicating statements, actively encourage others to commit terrorism offences in general.
- The proposed new offence is similar to one recently enacted by Australia, that prohibits advocating a terrorist act or the commission of a terrorism offence—all while being reckless to whether another person will engage in this kind of activity. In Australia's law, "advocacy" includes the promotion of terrorist activity. The maximum punishment is 5 years imprisonment.
- Creating the proposed offence broadens the scope of conduct currently caught by the *Criminal Code*. It would be another tool to prevent the commission of a terrorism offence.
- There are safeguards: the offence is narrowly defined, and requires Attorney General consent.

SEIZURE AND REMOVAL OF TERRORIST PROPAGANDA

- The ability to remove terrorist propaganda from domestic web-servers that make it available to the public is a complementary tool to the proposed new terrorism advocacy and promotion offence.
- The United Kingdom and Australia have legislative provisions that allow for the removal of terrorism-related material. For example, the United Kingdom model, which allows for the takedown of websites and social media feeds, has been in existence since 2006. In Australia, complaints about on-line content are made to the Australian Communications and Media Authority (ACMA). If the ACMA determines that the

content is restricted, that is, it incites violence or advocates a terrorist act, it issues a notice and take down order to the service provider.

PROTECTION OF WITNESSES AND OTHER JUSTICE SYSTEM PARTICIPANTS IN NATIONAL SECURITY PROCEEDINGS

- Ensuring that those who play a key role in national security investigations and prosecutions are adequately protected is critically important to ensuring success in the fight against terrorism.
- While existing tools can be used to protect witnesses involved in terrorism prosecutions, surprisingly they do not specifically require the courts to consider the witness' responsibilities related to national security or intelligence.
- Additionally, the current definition of "justice system participant" does not include those who play a role in national security proceedings.
- Under the proposed amendments to the *Criminal Code*, when deciding whether to allow a witness to testify using a pseudonym or via closed-circuit television, a court would be required to take into consideration the fact that a witness has responsibilities relating to national security.
- This could include, for example, allowing the witness to testify while partially disguised. Each order would be assessed on the facts while ensuring that the accused receives a fair trial.
- These proposed reforms would further build upon other key amendments already introduced by the Government including significant reforms contained in Bill C-32, the *Victims Bill of Rights Act* to make testimonial aids more readily available for witnesses and to provide better protection to CSIS employees and persons who provide information to the Service as proposed in Bill C-44, the *Protection of Canada from Terrorists Act*.

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Infocapsules

SUJET : Le 18 juin 2015, la *Loi antiterroriste de 2015* recevra la sanction royale. Ce projet de loi complet sur la sécurité nationale comprend un certain nombre de composantes législatives :

- l'échange de renseignements;
- les activités de perturbation des menaces du Service canadien du renseignement de sécurité (SCRS);
- la section 9 de la *Loi sur l'immigration et la protection des réfugiés* (LIPR);
- le Programme de protection des passagers;
- l'engagement de ne pas troubler l'ordre public en matière de terrorisme et l'engagement assorti de conditions;
- l'apologie et la promotion de la commission d'infractions terroristes en général;
- la saisie et le retrait de la propagande terroriste;
- la protection des témoins et d'autres participants du système de justice dans les procédures et les poursuites liées à la sécurité nationale.

MESSAGES CLÉS

- La menace que pose le terrorisme est réelle et le Canada n'est pas à l'abri. Des organisations terroristes comme l'EIIS constituent une menace directe à notre sécurité et elles doivent être attaquées de front.
- La *Loi antiterroriste de 2015* abordera de façon directe la menace du terrorisme : elle permet d'accroître la capacité du gouvernement du Canada d'échanger des renseignements à des fins de sécurité nationale, de criminaliser l'apologie et la promotion de la commission d'infractions terroristes, d'empêcher les terroristes de se rendre à l'étranger et de recruter d'autres personnes, en plus de fournir à nos services de police les outils supplémentaires dont ils ont besoin pour prévenir, détecter et combattre les menaces terroristes.
- Sans sécurité, la liberté ne peut exister. Notre gouvernement sait que la *Loi antiterroriste de 2015* atteint le bon équilibre, avec un éventail de dispositions pour renforcer les mesures de protection. Les rôles des organes d'examen indépendants actuels, comme le Comité de surveillance des activités de renseignement de sécurité (CSARS), sont robustes et serviront à veiller à ce que les pouvoirs créés en vertu de cette loi soient utilisés adéquatement.
- La *Loi antiterroriste de 2015* sert aux fins suivantes :
 - Mettre un terme aux activités de ceux qui font la promotion du terrorisme, par la création d'une nouvelle infraction dans le *Code criminel*, qui criminalisera l'apologie ou la promotion du terrorisme ou la commission d'infractions terroristes (*maintenant en vigueur*);
 - Lutter contre le recrutement à des fins terroristes, en donnant à nos juges le pouvoir d'ordonner la saisie et la confiscation de matériel de propagande terroriste



et le retrait de la propagande terroriste des sites Web canadiens (*maintenant en vigueur*);

- Donner au Service canadien du renseignement de sécurité (SCRS) la capacité, en vertu d'un pouvoir judiciaire, d'intervenir afin d'empêcher des complots terroristes précis (*maintenant en vigueur*);
- Améliorer le Programme de protection des passagers, en atténuant davantage les menaces à la sécurité des transports et en empêchant les déplacements aériens afin de prendre part à des activités liées au terrorisme (*les modifications apportées à la Loi sur la sûreté des déplacements aériens et les modifications connexes entreront en vigueur à une date fixée par ordonnance du gouverneur en conseil*);
- Faire en sorte qu'il soit plus facile pour nos forces policières de détenir temporairement et d'assortir de conditions de présumés terroristes avant qu'ils ne puissent faire du mal aux Canadiens et renforcer les pénalités pour violation de conditions imposées par les tribunaux à l'endroit des présumés terroristes (*ces modifications visant à renforcer les pouvoirs d'engagement assorti de conditions et d'engagement de ne pas troubler l'ordre public en matière de terrorisme entreront en vigueur dans 30 jours*);
- Permettre l'échange responsable de renseignements qui s'appliquent à la sécurité nationale entre les ministères et organismes fédéraux (*la Loi sur la sécurité de l'échange de renseignements au Canada et les modifications connexes entreront en vigueur à une date fixée par ordonnance du gouverneur en conseil*);
- Veiller à ce que le gouvernement soit plus en mesure de protéger et d'utiliser des renseignements classifiés au moment de refuser l'entrée et le statut à des non-citoyens qui posent une menace au Canada (*les modifications à la Loi sur l'immigration et la protection des réfugiés entreront en vigueur à une date fixée par ordonnance du gouverneur en conseil*);
- Accorder aux témoins et aux autres participants à des procédures et des poursuites liées à la sécurité nationale une protection supplémentaire (*la plupart de ces modifications sont maintenant en vigueur*).

ÉCHANGE DE RENSEIGNEMENTS

- Souvent, les renseignements sur les menaces à la sécurité nationale prennent des formes différentes et se trouvent en des lieux différents à l'échelle du gouvernement, et il faut les reconstituer afin de dresser un portrait cohérent qui permettra de prendre les mesures qui s'imposent.
- Un cadre de sécurité plus robuste rendra possible l'échange de renseignements pertinents entre les ministères et organismes fédéraux à des fins de sécurité nationale, viendra retirer des obstacles systémiques et contribuera à éliminer des lacunes au chapitre des services du renseignement et permettra un accès plus rapide aux renseignements essentiels lorsqu'il faut agir rapidement.
- Les institutions gouvernementales procéderont à cette modernisation d'une façon qui respecterait la sécurité et la vie privée, conformément aux valeurs canadiennes.

ACTIVITÉS DE PERTURBATION DES MENACES DU SCRS

- Ces changements représentent l'engagement, par le gouvernement, de protéger ses citoyens contre un environnement mondial des menaces en évolution. Ce cadre de



sécurité plus robuste apportera une nouvelle marge de manœuvre et une nouvelle expertise à appliquer aux menaces à la sécurité – au pays comme à l'étranger.

- Selon les dispositions législatives antérieures, le SCRS pouvait déceler les menaces à la sécurité, mais il était incapable de prendre des mesures en vue de protéger les intérêts canadiens.
- Par exemple, lorsque le SCRS menait une entrevue dans le cadre d'une enquête, elle devait avoir comme seul but la collecte de renseignements et non de dissuader le sujet des actes qui menacent la sécurité du Canada.
- Ces changements viendront harmoniser le mandat du SCRS avec celui de la plupart de nos alliés en conférant au SCRS un nouveau mandat visant à perturber les menaces à la sécurité du Canada.
- Ce nouveau mandat permet au SCRS de saisir l'occasion d'aborder les menaces au Canada. Le SCRS est bien placé pour perturber rapidement les menaces avant qu'elles n'évoluent.
- Par exemple, ce nouveau mandat permettra au SCRS de poser des questions à un associé à qui il fait confiance au sujet d'un voyageur terroriste potentiel, comme un membre de la famille, d'intervenir pour dissuader la personne de voyager.
- Un éventail de mesures de protection permettra de veiller à ce que SCRS s'acquitte de ce nouveau mandat d'une façon qui respecte la sécurité, la vie privée et la liberté individuelle.
- Le SCRS devra obtenir des mandats ordonnés par les tribunaux pour prendre certaines mesures pour perturber des menaces, au pays et à l'étranger, y compris dans les cas où ses activités de perturbation proposées pourraient porter atteinte aux droits garantis par la *Charte* ou qui pourraient par ailleurs être contraire au droit canadien.
- Toutes les activités du SCRS continueront d'être assujetties aux directives et à la surveillance ministérielle, ainsi qu'à un examen indépendant par le Comité de surveillance des activités de renseignement de sécurité (CSARS). Le CSARS publie un rapport annuel qui permettra de veiller à ce que le public soit informé des activités de perturbation des menaces du SCRS.

SECTION 9 DE LA LIPR

- Il est parfois nécessaire de se fier à des renseignements classifiés pour déterminer si un non-citoyen est inadmissible au Canada pour des motifs graves, tels que la sécurité nationale, les violations des droits de la personne ainsi que la grande criminalité et la criminalité organisée.
- Pour ce faire, les procédures visées par la section 9 de la *Loi sur l'immigration et la protection des réfugiés* (LIPR) – dont les certificats de sécurité – rendent possibles l'utilisation et la protection de renseignements classifiés lorsque la divulgation publique

de ces renseignements serait préjudiciable à la sécurité nationale ou porteraient atteinte à la sécurité d'autrui.

- Pour offrir une nouvelle mesure de protection des renseignements classifiés, le ministre de la Sécurité publique et de la Protection civile et le ministre de la Citoyenneté et de l'Immigration peuvent désormais, au cours de ces procédures, interjeter appel d'ordonnances de divulgation publique de renseignements classifiés ou demander à la Cour de les examiner.
- Par exemple, la divulgation de renseignements classifiés pourrait nuire à la sécurité publique si elle permettait de révéler des techniques d'enquête de nature délicate ou elle pourrait mettre une personne en danger si les renseignements classifiés à l'égard d'un témoin étaient divulgués.
- De plus, afin de veiller à ce que les procédures soient expéditives, ces dispositions législatives indiquent les renseignements qui feraient partie des causes relatives aux certificats de sécurité dont est saisie la Cour fédérale et des causes concernant des demandes de non-divulgation présentées à la Commission de l'immigration et du statut de réfugié du Canada.
- Ces mesures sont compatibles avec le devoir fondamental qu'a le gouvernement du Canada de protéger la sécurité des Canadiens tout en veillant à l'équité des procédures.
- Le Canada continue de respecter ses obligations légales et de défendre la primauté du droit. Le Canada maintient son engagement de préserver l'intégrité de nos frontières et de notre système d'immigration.

PROGRAMME DE PROTECTION DES PASSAGERS

- Ces dispositions législatives accordent au Programme de protection des passagers (PPP) le mandat d'identifier certaines personnes, d'inscrire leur nom sur une liste et d'atténuer les menaces qu'elles posent. Ces personnes appartiendraient à deux catégories : les personnes soupçonnées de poser une menace à la sécurité du transport et les personnes qui tentent de se déplacer à l'étranger pour commettre certaines infractions terroristes.
- Par exemple, les personnes qui appuient les activités terroristes, c'est-à-dire, les attaques, le financement d'armes, l'entraînement et le recrutement, seront également dorénavant inscrites et elles pourraient être interdits de voler.
- Cette amélioration apportée au PPP offrira au gouvernement un outil de plus pour prévenir les déplacements à des fins terroristes, y compris les cas où une arrestation et une poursuite ne sont pas possibles en ce moment.
- Plus précisément, la *Loi sur les déplacements aériens sécuritaires* définit ce qui suit :
 - le mandat du Programme consistant à s'attaquer aux menaces à la sécurité du transport et aux déplacements terroristes par avion;
 - les pouvoirs accordés au ministre de la Sécurité publique et de la Protection civile et à la ministre des Transports au titre du PPP;

- les pouvoirs de protection des renseignements et d'échange de renseignements avec les partenaires étrangers et intérieurs;
 - les mécanismes de recours destinés aux personnes touchées par les décisions prises par le ministre de la Sécurité publique et de la Protection civile au titre du PPP.
- Ces changements garantiront la protection et le respect continus des droits des Canadiens, conformément à la Charte des droits *et libertés* et à la *Loi sur la protection des renseignements personnels*, en renforçant la protection de la vie privée, son examen et la responsabilité à cet égard.

ÉLÉMENTS DU MINISTÈRE DE LA JUSTICE

ENGAGEMENT DE NE PAS TROUBLER L'ORDRE PUBLIC ET ENGAGEMENT ASSORTI DE CONDITIONS

- L'**engagement assorti de conditions** vise à accroître la capacité de perturber la perpétration d'une activité terroriste. Elle s'applique dans des situations où un agent de police a des motifs raisonnables de croire à la possibilité qu'une activité terroriste soit bientôt entreprise, mais n'a pas forcément plus de détails. L'outil est suffisamment souple pour être utilisé pour des personnes qui seraient liées d'une manière quelconque à la perpétration d'une activité terroriste.
- L'**engagement de ne pas troubler l'ordre public en matière de terrorisme** est conçu en vue d'accroître la capacité d'empêcher une personne en particulier de commettre une infraction de terrorisme, ou pour contrecarrer ses plans. Un engagement de ne pas troubler l'ordre public permet à quelqu'un qui craint raisonnablement qu'une personne particulière ne commette une infraction de terrorisme de demander à un juge d'imposer à cette personne un engagement de ne pas troubler l'ordre public en matière de terrorisme, assorti de toute condition raisonnable pour protéger le public de la perpétration d'une infraction de terrorisme.
- Les modifications apportées à l'**engagement assorti de conditions** et aux dispositions afférentes à l'émission d'**engagements de ne pas troubler l'ordre public en matière de terrorisme** du *Code criminel* rendraient plus facile d'obtenir de telles ordonnances par la voie des tribunaux et contribueraient à empêcher la perpétration d'actes de terrorisme par les moyens suivants :
 - abaisser le seuil requis pour que les organismes d'application de la loi obtiennent un engagement assorti de conditions et un engagement de ne pas troubler l'ordre public en matière de terrorisme
 - prolonger de trois jours à sept jours au maximum la période de détention préventive en vertu d'un engagement avec contrôle judiciaire périodique;
 - obliger les juges à examiner la possibilité d'imposer certaines conditions à un accusé, notamment l'obliger de remettre son passeport ou lui intimer de rester dans une région désignée. Les juges peuvent également envisager d'imposer des conditions, notamment l'obligation de se présenter aux autorités ou la surveillance électronique;
 - porter de deux à quatre ans la peine d'emprisonnement maximal pour la violation des conditions imposées par le tribunal;
 - améliorer l'efficacité de la procédure grâce à un certain nombre de moyens, notamment le recours aux audiences par vidéo.

- Les mesures proposées sont nécessaires pour assurer la sécurité publique, et elles sont compatibles avec les lois antiterroristes d'autres pays. Par exemple, le Royaume-Uni et l'Australie ont aussi des pouvoirs de prévention, y compris la capacité d'imposer des conditions et de détenir, bien que leur approche puisse varier; par exemple la période maximale de détention est de 14 jours au Royaume-Uni.
- Ces outils comportent un certain nombre de sauvegardes, notamment la surveillance judiciaire ainsi que l'obligation d'obtenir le consentement du procureur général, et la présentation annuelle de rapports publics au Parlement sur le recours à l'engagement assorti de conditions.

PRÉCONISATION ET FOMENTATION D'ACTES DE TERRORISME

- Cette réforme créera une nouvelle infraction de préconisation ou de fomentation d'actes de terrorisme en général.
- Le droit pénal s'applique déjà aux personnes qui conseillent à d'autres personnes de commettre une infraction particulière de terrorisme ou qui les encouragent activement à le faire. Cette réforme comblerait une lacune actuelle du droit pénal en pénalisant quiconque qui, en communiquant des déclarations, encourage activement d'autres personnes à commettre des infractions de terrorisme en général.
- La nouvelle infraction proposée est semblable à celle qui a récemment été adoptée en Australie, qui interdit de préconiser un acte terroriste ou de perpétrer une infraction de terrorisme, sans se soucier de la possibilité qu'une autre personne s'engagera dans ce type d'activité. Dans la loi australienne, la préconisation inclut la fomentation de l'activité terroriste. La peine d'emprisonnement maximale est de cinq ans.
- Elle comporte des sauvegardes; l'infraction est étroitement définie et exige le consentement du procureur général.

SAISIE ET ÉLIMINATION DE PROPAGANDE TERRORISTE

- La capacité de saisir la propagande terroriste ou de retirer la propagande terroriste des serveurs Web intérieurs qui la mettent à la disposition du public complète la nouvelle infraction de préconisation et de fomentation d'actes de terrorisme.
- Le Royaume-Uni et l'Australie possèdent des dispositions législatives qui permettent la confiscation de documents liés au terrorisme. Par exemple, le modèle du Royaume-Uni, qui prévoit la fermeture de sites Web et l'interdiction de diffusion dans les médias sociaux existe depuis 2006. En Australie, les plaintes concernant le contenu en ligne sont déposées auprès de l'Australian Communications and Media Authority (ACMA). Si l'ACMA détermine que le contenu est sujet à restriction, en l'occurrence qu'il incite à la violence ou promeut un acte terroriste, elle délivre un avis et un ordre de fermeture au fournisseur de services.

PROTECTION DES TÉMOINS ET D'AUTRES PERSONNES ASSOCIÉES AU SYSTÈME JUDICIAIRE DANS LE CADRE DE POURSUITES RELATIVES À LA SÉCURITÉ NATIONALE

- Veiller à ce que les personnes qui jouent un rôle déterminant lors d'enquêtes et de poursuites relatives à la sécurité nationale soient adéquatement protégées revêt une importance cruciale pour garantir la réussite dans la lutte contre le terrorisme.
- Les réformes essentielles pour renforcer la protection comprennent ce qui suit :
 - modifier la définition de personne associée au système judiciaire pour y inclure ceux qui jouent un rôle dans les poursuites relatives à la sécurité nationale;
 - obliger les tribunaux à tenir compte du fait qu'un témoin a des responsabilités en matière de sécurité nationale au moment de déterminer s'il faut ordonner l'utilisation de dispositifs d'aide au témoignage;
 - abolir l'obligation de publier le nom des poursuivants et des agents de la paix désignés par le gouvernement fédéral qui ont obtenu des autorisations d'intercepter des télécommunications.
- Ces changements se fondent sur des réformes semblables pour accroître la protection de ceux qui jouent un rôle déterminant lors de poursuites criminelles et d'enquêtes relatives à la sécurité nationale contenues dans la *Loi sur la Charte des droits des victimes* et la *Loi sur la protection du Canada contre les terroristes*.

Préparé par : Erika Paulson, Communications de Sécurité publique (SP) (993-4415)

Examiné au départ par : Services juridiques de SP; ministère de la Justice; SCRS; Gendarmerie royale du Canada; Transports Canada; Citoyenneté et Immigration Canada; ASFC; ministère des Affaires étrangères, du Commerce et du Développement;

Messages clés sur la sanction royale examiné par : Ministère de la Justice

Approuvé par : Politiques de la sécurité nationale, directeur général, Communications; Cabinet du ministre; Bureau du Conseil privé

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Media Lines

JUSTICE TERRORISM PREVENTION MEASURES

Background:

The Government of Canada will soon introduce legislation to strengthen existing laws related to national security and terrorism. *Criminal Code* amendments falling under the responsibility of the Department of Justice include: changes to the recognizance with conditions and the creation of a new terrorism peace bond; a new offence of advocating or promoting terrorism offences in general; new provisions related to judicially authorized seizure and removal of terrorist propaganda; and reforms to improve protections for individuals participating as witnesses in national security proceedings.

Media Lines:

Recognizance with conditions and terrorism peace bonds

- The ability to prevent terrorism before it happens through the use of the recognizance with conditions and the terrorism peace bond is critically important in our overall approach to countering terrorism at home and abroad.
- The proposed measures build on recently enacted anti-terrorism reforms (the *Combating Terrorism Act* and the *Nuclear Terrorism Act*) that included new offences, including terrorist travel offences.
- The purpose of the **recognizance with conditions** measure is to address a situation where a police officer believes that a terrorist activity will soon be carried out but does not necessarily have more details. The tool is flexible enough to be used on individuals who may in some way be connected to carrying out terrorist activity.
- The purpose of a **terrorism peace bond** is to prevent or disrupt a specific individual from committing a terrorism offence. A peace bonds allows someone who reasonably fears that a particular person will commit a terrorism offence to seek to have a judge impose a peace bond on that person with any reasonable conditions to protect the public from the commission of a terrorism offence.
- The amendments to the **recognizance with conditions** and the creation of a new **terrorism peace bond** of the *Criminal Code* would help prevent terrorist acts by:
 - Lowering the threshold required for law enforcement to obtain both the recognizance with conditions and terrorism peace bond;

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- Increasing the period of preventative detention under a recognizance from 3 days to a possible total of up to 7 days, with periodic judicial review; with safeguards;
 - Requiring judges to consider imposing any certain conditions on a defendant, such as surrendering their passport or not leaving the jurisdiction;
 - Increasing the maximum penalty for breaches of these court-ordered conditions from 2 to 4 years imprisonment; and
 - Increasing the efficiency of the proceedings through a number of means, including through the use of video hearings.
- The proposed measures are needed to ensure public safety, and they are consistent with counter-terrorism laws in other countries. The United Kingdom and Australia for example, also have preventative powers including the ability to impose conditions and to detain--although their approaches may vary, for example, the maximum period of detention is 14 days in the United Kingdom.
 - These tools contain a number of safeguards, including judicial oversight as well as the requirement of Attorney General consent , and annual public reporting on the use of recognizance with conditions.

Advocacy or promotion of terrorism

- This reform would create a new offence of advocating or promoting terrorism generally.
- The criminal law already applies to those who counsel, or actively encourage, the commission of a specific terrorism offence. This reform would fill an existing gap in the criminal law by applying it to those who, by communicating statements, actively encourage others to commit terrorism offences in general.
- The proposed new offence is similar to one recently enacted by Australia, that prohibits advocating a terrorist act or the commission of a terrorism offence—all while being reckless to whether another person will engage in this kind of activity. In Australia's law, "advocacy" includes the promotion of terrorist activity. The maximum punishment is 5 years imprisonment.
- Creating the proposed offence broadens the scope of conduct currently caught by the *Criminal Code*. It would be another tool to prevent the commission of a terrorism offence.

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- The proposed offence is not focussed on the “glorification” of terrorism, but is narrowly defined to safeguard the constitutionally protected right of freedom of expression.

Seizure and removal of terrorist propaganda

- The dissemination of terrorist propaganda, especially via the Internet, is increasingly being linked to radicalization.
- The ability to remove terrorist propaganda from domestic web-servers that make it available to the public is a complementary tool to the proposed new terrorism advocacy and promotion offence.
- The United Kingdom and Australia have legislative provisions that allow for the removal of terrorism-related material. For example, the United Kingdom model, which allows for the takedown of websites and social media feeds, has been in existence since 2006. In Australia, complaints about on-line content are made to the Australian Communications and Media Authority (ACMA). If the ACMA determines that the content is restricted, that is, it incites violence or advocates a terrorist act, it issues a notice and take down order to the service provider.

Protection of witnesses and other justice system participants in national security proceedings

- Ensuring that those who play a key role in national security investigations and prosecutions are adequately protected is critically important to ensuring success in the fight against terrorism.
- While existing tools can be used to protect witnesses involved in terrorism prosecutions, surprisingly they do not specifically require the courts to consider the witness’ responsibilities related to national security or intelligence.
- Additionally, the current definition of “justice system participant” does not include those who play a role in national security proceedings. For example, it does not include witnesses involved in immigration proceedings that lead to the removal of persons who do not have a legal right to be in Canada and who are determined to pose a serious threat to national security. The proposed legislative reforms would address these issues.
- Under the proposed amendments to the *Criminal Code*, when deciding whether to allow a witness to testify using a pseudonym or via closed-circuit television, a court would be required to take into consideration the fact that a witness has responsibilities relating to national security.

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- This could include, for example, allowing the witness to testify while partially disguised. Each order would be assessed on the facts while ensuring that the accused receives a fair trial.
- These proposed reforms would further build upon other key amendments already introduced by the Government including significant reforms contained in Bill C-32, the *Victims Bill of Rights Act* to make testimonial aids more readily available for witnesses and the better protection of CSIS human sources as proposed in Bill C-44, the *Protection of Canada from Terrorists Act*.

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Prepared by: Kathy Bolton

Date: January 15, 2015



Media Lines

ISSUE: On June 18, 2015, the *Anti-terrorism Act, 2015* will receive Royal Assent. This comprehensive national security Bill includes a number of legislative components:

- Information Sharing,
- CSIS Threat Disruption Activities,
- Division 9 of the Immigration and Refugee Protection Act (IRPA),
- Passenger Protect Program,
- Terrorism Peace Bond and Recognizance with Conditions,
- Advocacy or promotion of the commission of terrorism offences in general,
- Seizure and Removal of Terrorist Propaganda, and
- Protection of Witnesses and Other Justice System Participants in National Security Proceedings and Prosecutions.

KEY MESSAGES

- The threat of terrorism is real and Canada is not immune. Terrorist organizations such as ISIS pose a direct threat to our safety and security, and must be confronted head-on.
- The *Anti-terrorism Act, 2015*, will directly address the threat of terrorism by enhancing the Government of Canada's ability to share information for national security purposes; criminalizing the advocacy and promotion of the commission of terrorism offences; preventing terrorists from travelling and recruiting others; and providing our police forces with the additional tools they need to prevent, detect, deny and respond to the threat of terrorism.
- Without security, there can be no liberty. Our Government knows that the *Anti-terrorism Act, 2015* strikes the right balance, with a range of provisions to strengthen safeguards. The roles of existing independent review bodies, such as the Security Intelligence Review Committee (SIRC), are robust and will ensure that the authorities created under this legislation are used appropriately.
- The *Anti-terrorism Act, 2015*, serves to:
 - Stop those who promote terrorism by creating a new *Criminal Code* offence that will criminalize the advocacy or promotion of the commission of terrorism offences (*now in force*);
 - Counter terrorist recruitment by giving our judges the authority to order the seizure and forfeiture of terrorist propaganda material and the removal of terrorist propaganda from Canadian websites (*now in force*);
 - Provide the Canadian Security Intelligence Service (CSIS) with the ability, under judicial authority, to intervene to prevent specific terrorist plots (*now in force*);
 - Enhance the Passenger Protect Program by further mitigating threats to transportation security and preventing travel by air for the purpose of engaging in terrorism-related activities (*these amendments to the Secure Air Travel Act and*



related amendments will come into force on a date fixed by an order of the Governor in Council);

- Make it easier for our police forces to temporarily detain and have conditions imposed on suspected terrorists before they can harm Canadians and toughening penalties for violating court-ordered conditions on terrorist suspects *(these amendments to strengthen the terrorism recognizance with conditions and peace bond powers will come into force in 30 days);*
- Enable the responsible sharing of relevant national security information across federal departments and agencies *(the Security of Canada Information Sharing Act and related amendments will come into force on a date fixed by an order of the Governor in Council);*
- Ensure that the Government is better able to protect and use classified information when denying entry and status to non-citizens who pose a threat to Canada; *(these amendments to the Immigration and Refugee Protection Act will come into force on a date fixed by an order of the Governor in Council);* and,
- Provide witnesses and other participants in national security proceedings and prosecutions with additional protection *(most of these amendments are now in force).*

INFORMATION SHARING

- Information on national security threats can often be found in different forms and places across the government, and must be pieced together to form a coherent picture so that appropriate action can be taken.
- A more robust security framework will enable the sharing of relevant information across federal departments and agencies for national security purposes, removing systemic barriers and helping to eliminate intelligence gaps, and allow for faster access to critical information when swift action is required.
- Government institutions will proceed with this modernization in a way that respects security and privacy—consistent with Canadian values.

CSIS THREAT DISRUPTION ACTIVITIES

- These changes represent the Government's commitment to protecting its citizens from an evolving global threat environment. This more robust security framework will bring new flexibility and expertise to bear against security threats, both at home and abroad.
- Under previous legislation, CSIS could detect security threats, but was unable to take action to protect the security of Canada.
- For instance, when CSIS conducted an interview as part of an investigation, the sole purpose of the interview would be to collect information, not to dissuade the subject from actions that threaten the security of Canada.
- These changes will bring CSIS into line with the mandates of most of our allies' security intelligence agencies by giving CSIS a new mandate to disrupt threats to the security of Canada.

- With this new mandate, CSIS can seize opportunities to address threats to Canada. CSIS is well-placed to quickly disrupt threats before they can develop.
- For instance, with its new mandate, CSIS could ask a trusted associate of a prospective terrorist traveler, such as a family member, to intervene to dissuade the person from traveling.
- A range of safeguards will ensure that CSIS uses this new mandate in a way that respects security, privacy and personal liberty.
- CSIS will require court warrants to take certain measures to disrupt threats, both within and outside of Canada, including where its proposed disruption activities contravene *Charter* rights or would otherwise be contrary to Canadian law.
- All CSIS activities will remain subject to Ministerial direction and oversight, as well as independent review by the Security Intelligence Review Committee (SIRC). SIRC issues an annual report that will ensure the public is kept informed of CSIS' threat disruption activities.

DIVISION 9 IRPA

- It is sometimes necessary to rely on classified information to determine whether a non-citizen is inadmissible to Canada on serious grounds, such as national security, human rights violations and serious or organized criminality.
- To do so, proceedings under Division 9 of the *Immigration and Refugee Protection Act* (IRPA)—such as security certificates—allow for the use and protection of classified information when its public disclosure would be injurious to national security or endanger the safety of any person.
- To offer a new protection for classified information, the Minister of Public Safety and Emergency Preparedness and the Minister of Citizenship and Immigration can now appeal or have the Court review orders to publicly disclose classified information during these proceedings.
- For example, disclosing classified information would injure national security if it were to reveal investigation techniques, or would endanger the safety of a person if classified information regarding a witness were to be disclosed.
- Also, to ensure expeditious proceedings, this legislation states what information would form part of security certificate cases before the Federal Court, and in cases involving applications for non-disclosure before the Immigration and Refugee Board.
- These measures are consistent with the Government of Canada's fundamental duty to protect the safety and security of Canadians, while ensuring the fairness of proceedings.
- Canada continues to uphold its legal obligations and advocate for the rule of law. Canada remains committed to preserving the integrity of our borders and immigration system.

PASSENGER PROTECT PROGRAM

- This legislation provides the Passenger Protect Program (PPP) with a mandate to identify, list, and mitigate threats from two categories of individuals: those who are suspected of posing a threat to transportation security, and those who are attempting to travel abroad to commit certain terrorism offences.
- For example, individuals supporting terrorism activities such as attacks, funding for weapons, training and recruitment, will now also be listed and could potentially be prevented from flying.
- This enhancement to the PPP provides the Government with an additional tool to prevent travel for terrorism purposes, including in cases where arrest and prosecution are not possible at the time.
- Specifically, the *Secure Air Travel Act* defines the following:
 - the program mandate to address threats to both transportation security and terrorist travel by air;
 - the authorities of the Minister of Public Safety and Emergency Preparedness and the Minister of Transport under the PPP;
 - the authorities for protecting and sharing information with foreign and domestic partners; and
 - the recourse mechanisms for people who are affected by decisions made by the Minister of Public Safety and Emergency Preparedness under the PPP.
- These changes ensure the continued respect and protection of the rights of Canadians, in accordance with both the *Charter of Rights and Freedoms* and the *Privacy Act*, by strengthening privacy protection, review and accountability.

DOJ ELEMENTS

PEACE BONDS AND RECOGNIZANCE WITH CONDITIONS

- The purpose of the **recognizance with conditions** changes is to improve the ability to disrupt the carrying out of a terrorist activity. It applies where a police officer reasonably believes that a terrorist activity may be carried out and reasonably suspects that imposing the recognizance on a person will likely prevent the carrying out of the terrorist activity. The tool is flexible enough to be used on individuals who may in some way be connected to carrying out terrorist activity.
- The purpose of the **terrorism peace bond** changes are to improve the ability to prevent or disrupt a specific individual from committing a terrorism offence. The peace bond would allow someone who reasonably fears that a particular person may commit a terrorism offence to seek to have a judge impose a peace bond on that person with any reasonable conditions to protect the public from the commission of a terrorism offence.

- The amendments to the **recognizance with conditions** and provisions related to the issuance of the **terrorism peace bond** of the *Criminal Code* make it easier to obtain such orders through the courts and help prevent terrorist acts by:
 - Lowering the threshold required for law enforcement to obtain both the recognizance with conditions and terrorism peace bond;
 - Increasing the period of preventative detention under a recognizance with conditions from 3 days to a possible total of up to 7 days, with periodic judicial review;
 - Requiring judges to consider imposing certain conditions on a defendant, such as surrendering their passport or not leaving the jurisdiction. Judges may also consider imposing conditions such as reporting requirements or electronic monitoring;
 - Increasing the maximum penalty for breaches of these court-ordered conditions from 2 to 4 years imprisonment; and
 - Increasing the efficiency of the proceedings through a number of means, including through the use of video hearings.
- These measures are needed to ensure public safety, and are consistent with counter-terrorism laws in other countries. The United Kingdom and Australia, for example, also have preventative powers including the ability to impose conditions and to detain—although their approaches may vary; for example, the maximum period of detention is 14 days in the United Kingdom.
- These tools contain a number of safeguards, including judicial oversight as well as the requirement of prior Attorney General consent, and annual public reporting to Parliament on the use of recognizance with conditions.

ADVOCACY OR PROMOTION OF TERRORISM

- This reform creates a new offence of advocating or promoting the commission of terrorism offences in general.
- The criminal law already applies to those who counsel, or actively encourage, the commission of a specific terrorism offence. This reform fills an existing gap or uncertainty in the criminal law by applying it to those who, by communicating statements, actively encourage others to commit terrorism offences in general.
- This new offence is similar to one recently enacted by Australia, that prohibits advocating a terrorist act or the commission of a terrorism offence—all while being reckless to whether another person will engage in this kind of activity. In Australia's law, "advocacy" includes the promotion of terrorist activity. The maximum punishment is 5 years imprisonment.
- There are safeguards: the offence is narrowly-defined, and requires Attorney General consent.

SEIZURE AND REMOVAL OF TERRORIST PROPAGANDA

- The ability to seize terrorist propaganda or remove terrorist propaganda from Canadian web-servers that make it available to the public complements the new terrorism advocacy and promotion offence.
- The United Kingdom and Australia have legislative provisions that allow for the removal of terrorism-related material. For example, the United Kingdom model, which allows for the takedown of websites and social media feeds, has been in existence since 2006. In Australia, complaints about on-line content are made to the Australian Communications and Media Authority (ACMA). If the ACMA determines that the content is restricted, that is, it incites violence or advocates a terrorist act, it issues a notice and take down order to the service provider.

PROTECTION OF WITNESSES AND OTHER JUSTICE SYSTEM PARTICIPANTS IN NATIONAL SECURITY PROCEEDINGS

- Protecting those who support national security investigations and prosecutions is critically important to ensuring success in the fight against terrorism.
- Key reforms to strengthen protection include:
 - Amending the definition of justice system participant to include those who play a role in national security proceedings;
 - Requiring the courts to consider the fact that a witness has responsibilities relating to national security when determining whether to order testimonial aids;
 - Removing the requirement to publish the names of federally designated prosecutors and peace officers who have obtained authorizations to intercept tele-communications.
- These changes build upon similar reforms to strengthen the protection of those who support criminal prosecutions and national security investigations contained in the *Victims Bill of Rights Act* and the *Protection of Canada from Terrorists Act*.

Prepared by: Erika Paulson, PS Comms (993-4415)

Originally reviewed by: PS Legal; DoJ; CSIS; RCMP; TC; CIC; CBSA; DFATD

Revised Royal Assent Key Messages reviewed by: DoJ

Approved by: NS Policy DG; DG Comms; MO; PCO